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COMMON CAUSE (A REGISTERED SOCIETY) v. UNION OF INDIA

SUPREME COURT, INDIA
(2014) 5 SUPREME COURT CASES 338
P SATHASIVAM CJ
B RANJAN GOGOI J
SHIVA KIRTI SINGH J
[WRIT PETITION (C) No: 215 of 2005†]
25 FEBRUARY 2014

C ***CONSTITUTIONAL LAW:*** *Constitution of India – Art. 141 – Reference to larger Bench – When warranted – Clear enunciation of important question of law which needs to be reflected in light of social, legal, medical and constitutional perspectives – Declaration of "right to die with dignity" as fundamental right within fold of "right to live with dignity" guaranteed under Art. 21 – Inconsistent observations* D *in Aruna Shanbaug, (2011) 4 SCC 454 which upholds validity of passive euthanasia and lays down an elaborate procedure for executing the same on the wrong premise that the Constitution Bench in Gian Kaur, (1996) 2 SCC 648 permitted the same – Matter referred to Constitution Bench – Penal Code, 1860 – S. 309 – Human and Civil Rights – Right to die*

E ***CONSTITUTIONAL LAW:*** *Constitution of India – Art. 141 – What is binding – "Law declared by Supreme Court" – Mere reference to verdict in judgment – Held, cannot be construed to mean that the verdict is approved (Para 13)*

A writ petition under Article 32 of the Constitution was filed by Common Cause Society, engaged in taking up various common problems of the people F for securing redressal, praying for declaring "right to die with dignity" as a fundamental right within the fold of "right to live with dignity" guaranteed under Article 21 of the Constitution and to issue direction to the respondent, to adopt suitable procedures, in consultation with the State Governments wherever necessary, to ensure that the persons with deteriorated health or G terminally ill should be able to execute a document *viz*. "my living will and attorney authorisation" which can be presented to hospital for appropriate action in the event of the executant being admitted to the hospital with serious illness which may threaten termination of life of the executant or in the alternative, issue appropriate guidelines to this effect and to appoint an H expert committee consisting of doctors, social scientists and lawyers to study into the aspect of issuing guidelines regarding execution of "living wills".

Referring the matter to a Constitution Bench, the Supreme Court

Held:

I Although the Constitution Bench in *Gian Kaur*, (1996) 2 SCC 648 upheld that the "right to live with dignity" under Article 21 will be inclusive of "right to die with dignity", the decision does not arrive at a conclusion for validity

† Under Article 32 of the Constitution of India

of euthanasia be it active or passive. *Aruna Shanbaug*, (2011) 4 SCC 454 aptly interpreted the decision of the Constitution Bench in *Gian Kaur* case and came to the conclusion that euthanasia can be allowed in India only through a valid legislation (paras 21 and 101 thereof). However, in para 104, the Bench in *Aruna Shanbaug* case contradicted its own interpretation of *Gian Kaur* case in para 101 and stated that although the Supreme Court approved the view taken in *Airedale*, 1993 AC 789, it has not clarified who can decide whether life support should be discontinued in the case of an incompetent person e.g. a person in coma or PVS. When, at the outset, it is interpreted to hold that euthanasia could be made lawful only by legislation, there is no question of deciding whether the life support should be discontinued in the case of an incompetent person e.g. a person in coma or PVS. Besides, it is factually wrong to observe that in *Gian Kaur* case, the Constitution Bench approved the decision of the House of Lords in *Airedale* case. A mere reference in the verdict cannot be construed to mean that the Constitution Bench in *Gian Kaur* case approved the opinion of the House of Lords rendered in *Airedale* case. In view of the inconsistent observations rendered in *Aruna Shanbaug* case and also considering the important question of law involved which needs to be reflected in the light of social, legal, medical and constitutional perspective, it becomes extremely important to have a clear enunciation of law. Thus, the question of law involved requires careful consideration by a Constitution Bench of the Supreme Court for the benefit of humanity as a whole. (Paras 10 to 17)

Gian Kaur v. State of Punjab, (1996) 2 SCC 648 : 1996 SCC (Cri) 374, considered
Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454 : (2011) 2 SCC (Civ) 280 : (2011) 2 SCC (Cri) 294, partly overruled
Airedale N.H.S. Trust v. Bland, 1993 AC 789 : (1993) 2 WLR 316 : (1993) 1 All ER 821 (HL);
Parmanand Katara v. Union of India, (1989) 4 SCC 286 : 1989 SCC (Cri) 721, referred to
P. Rathinam v. Union of India, (1994) 3 SCC 394 : 1994 SCC (Cri) 740, cited

P-D/52978/CR

Advocates who appeared in this case:

for the Appearing Parties - Sidharth Luthra, Additional Solicitor General, R.P. Bhatt and V.A. Mohta, Senior Advocates (Prashant Bhushan, Rohit Kr. Singh, Pranav Sachdeva, Ms Sunita Sharma, Pranav Aggarwal, Ms Sushma Suri, Ms Supriya Juneja, Aniruddha P. Mayee, Nilakanth, Charudatta Mahindrakar, Praveen Khattar and B. Vijay Kumar, Advocates)

Chronological list of cases cited on page(s)

Aruna Ramachandra Shanbaug v. Union of India (partly overruled) (2011) 4 SCC 454 : (2011) 2 SCC (Civ) 280 : (2011) 2 SCC (Cri) 294,
Gian Kaur v. State of Punjab (1996) 2 SCC 648 : 1996 SCC (Cri) 374,
P. Rathinam v. Union of India (1994) 3 SCC 394 : 1994 SCC (Cri) 740,
Airedale N.H.S. Trust v. Bland 1993 AC 789 : (1993) 2 WLR 316 : (1993) 1 All ER 821 (HL),
Parmanand Katara v. Union of India (Sathasivam, C.J.) (1989) 4 SCC 286 : 1989 SCC (Cri) 721,

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JUDGMENT

P Sathasivam CJ:

[1] This writ petition, under Article 32 of the Constitution of India, has been filed by Common Cause – a society registered under the Societies
B Registration Act, 1860, engaged in taking up various common problems of the people for securing redressal, praying for declaring "right to die with dignity" as a fundamental right within the fold of "right to live with dignity" guaranteed under Article 21 of the Constitution and to issue direction to the respondent, to adopt suitable procedures, in consultation with the State
C Governments wherever necessary, to ensure that the persons with deteriorated health or terminally ill should be able to execute a document *viz.* "my living will and attorney authorisation" which can be presented to hospital for appropriate action in the event of the executant being admitted to the hospital with serious illness which may threaten termination of life of the executant or in the alternative, issue appropriate guidelines to this effect
D and to appoint an expert committee consisting of doctors, social scientists and lawyers to study into the aspect of issuing guidelines regarding execution of "living wills".

[2] On 19-6-2002 and 25-6-2002, the petitioner Society had written letters
E to the Ministry of Law, Justice and Company Affairs and the Ministry of Health and Family Welfare with a similar prayer as in this writ petition. Concurrently, the petitioner also wrote letters to the State Governments in this regard, as hospitals come within the jurisdiction of both the State Governments and the Union of India.

F **[3]** In the abovesaid communication, the petitioner had emphasised the need for a law to be passed which would authorise the execution of the "living will and attorney authorisation". Further, in the second letter, the petitioner Society particularly relied on the decision of this Court in *Gian Kaur v. State of Punjab*[1] to support its request. Since no reply has been
G received, the petitioner Society has preferred this writ petition.

[4] Heard Mr Prashant Bhushan, learned counsel for the petitioner Society, Mr Sidharth Luthra, learned Additional Solicitor General for the Union of India and Mr V.A. Mohta, learned Senior Counsel and Mr Praveen Khattar, learned counsel for the intervenors.

H **Contentions**

[5] According to the petitioner Society, the citizens who are suffering from chronic diseases and/or are at the end of their natural life-span and are likely to go into a state of terminal illness or permanent vegetative state are

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1 (1996) 2 SCC 648 : 1996 SCC (Cri) 374

deprived of their rights to refuse cruel and unwanted medical treatment like feeding through hydration tubes, being kept on ventilator and other life-supporting machines, in order to artificially prolong their natural life-span. Thus, the denial of this right leads to extension of pain and agony both physical as well as mental which the petitioner Society seeks to end by making an informed choice by way of clearly expressing their wishes in advance called "a living will" in the event of their going into a state when it will not be possible for them to express their wishes.

[6] On the other hand, Mr Sidharth Luthra, learned Additional Solicitor General submitted on behalf of the Union of India that as per the Hippocratic oath, the primary duty of every doctor is to save lives of patients. A reference was made to Regulation 6.7 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, which explicitly prohibits doctors from practising euthanasia. Regulation 6.7 reads as follows:

> 6.7. Euthanasia. – Practising euthanasia shall constitute unethical conduct. However, on specific occasion, the question of withdrawing supporting devices to sustain cardiopulmonary function even after brain death, shall be decided only by a team of doctors and not merely by the treating physician alone. A team of doctors shall declare withdrawal of support system. Such team shall consist of the doctor in charge of the patient, Chief Medical Officer/Medical Officer in charge of the hospital and a doctor nominated by the in charge of the hospital from the hospital staff or in accordance with the provisions of the Transplantation of Human Organs Act, 1994.

In addition, the respondent relied on the findings of this Court in *Parmanand Katara v. Union of India*[2] to emphasise that primary duty of a doctor is to provide treatment and to save the life whenever an injured person is brought to the hospital or clinic and not otherwise.

[7] The petitioner Society responded to the abovementioned contention by asserting that all these principles work on a belief that the basic desire of a person is to get treated and to live. It was further submitted that when there is express desire of not having any treatment, then the said person cannot be subjected to unwanted treatment against his/her wishes. It was also submitted that subjecting a person, who is terminally ill and in a permanently vegetative state with no hope of recovery, to a life-support treatment against his/her express desire and keeping him under tremendous pain is in violation of his right to die with dignity. Besides, the petitioner Society also highlighted that the doctors cannot, by some active means like giving lethal injections, put any person to death, as it would amount to "active euthanasia" which is illegal in India as observed in *Aruna Ramachandra Shanbaug v. Union of India*[3].

2 (1989) 4 SCC 286 : 1989 SCC (Cri) 721

3 (2011) 4 SCC 454 : (2011) 2 SCC (Civ) 280 : (2011) 2 SCC (Cri) 294

[8] Therefore, the petitioner Society pleads for reading the aforesaid regulation only to prohibit the active euthanasia and the said regulation should not be interpreted in a manner which casts obligation on doctors to keep providing treatment to a person who has already expressed a desire not to have any life-prolonging measure. Thus, it is the stand of the petitioner Society that any such practice will not be in consonance with the law laid down by this Court in *Gian Kaur*[1] as well as in *Aruna Shanbaug*[3].

Discussion

[9] In the light of the contentions raised, it is requisite to comprehend what was said in *Gian Kaur*[1] and *Aruna Shanbaug*[3] to arrive at a decision in the given case, as the prayer sought for in this writ petition directly places reliance on the reasoning of the aforesaid verdicts.

[10] In *Gian Kaur*[1], the subject-matter of reference before the Constitution Bench was as to the interpretation of Article 21 relating to the constitutional validity of Sections 306 and 309 of the Penal Code, 1860, wherein, it was held that "right to life" under Article 21 does not include "right to die". While affirming the above view, the Constitution Bench also observed that "right to live with dignity" includes "right to die with dignity". It is on the basis of this observation, the petitioner Society seeks for a remedy under Article 32 of the Constitution in the given petition.

[11] Therefore, although the discussion on euthanasia was not relevant for deciding the question of the constitutional validity of the said provisions, the Constitution Bench went on to concisely deliberate on this issue as well in the ensuing manner: (*Gian Kaur* case[1], SCC pp. 660-61, paras 24-25)

> 24. Protagonism of euthanasia on the view that existence in persistent vegetative state (PVS) is not a benefit to the patient of a terminal illness being unrelated to the principle of 'sanctity of life' or the 'right to live with dignity' is of no assistance to determine the scope of Article 21 for deciding whether the guarantee of 'right to life' therein includes the 'right to die'. The 'right to life' including the right to live with human dignity would mean the existence of such a right up to the end of natural life. This also includes the right to a dignified life up to the point of death including a dignified procedure of death. In other words, this may include the right of a dying man to also die with dignity when his life is ebbing out. But the 'right to die' with dignity at the end of life is not to be confused or equated with the 'right to die' an unnatural death curtailing the natural span of life.
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> 25. A question may arise, in the context of a dying man who is terminally ill or in a persistent vegetative state that he may be permitted to terminate

1 *Gian Kaur v. State of Punjab*, (1996) 2 SCC 648 : 1996 SCC (Cri) 374

3 *Aruna Ramachandra Shanbaug v. Union of India*, (2011) 4 SCC 454 : (2011) 2 SCC (Civ) 280 : (2011) 2 SCC (Cri) 294

> it by a premature extinction of his life in those circumstances. This category of cases may fall within the ambit of the 'right to die' with dignity as a part of right to live with dignity, when death due to termination of natural life is certain and imminent and the process of natural death has commenced. These are not cases of extinguishing life but only of accelerating conclusion of the process of natural death which has already commenced. The debate even in such cases to permit physician-assisted termination of life is inconclusive. It is sufficient to reiterate that the argument to support the view of permitting termination of life in such cases to reduce the period of suffering during the process of certain natural death is not available to interpret Article 21 to include therein the right to curtail the natural span of life.
>
> (emphasis supplied)

In succinct, the Constitution Bench did not express any binding view on the subject of euthanasia rather reiterated that the legislature would be the appropriate authority to bring the change.

[12] In *Aruna Shanbaug*[3], this Court, after having referred to the aforesaid paras 24 and 25 of *Gian Kaur*[1], stated as follows: (*Aruna Shanbaug* case[3], SCC p. 487, para 21)

> 21. We have carefully considered paras 24 and 25 in *Gian Kaur* case[1] and we are of the opinion that all that has been said therein is that the view in *Rathinam* case[4] that the right to life includes the right to die is not correct. We cannot construe *Gian Kaur* case[1] to mean anything beyond that. In fact, it has been specifically mentioned in para 25 of the aforesaid decision that 'the debate even in such cases to permit physician-assisted termination of life is inconclusive'. Thus it is obvious that no final view was expressed in the decision in *Gian Kaur* case[1] beyond what we have mentioned above. (emphasis supplied)

It was further held that: (*Aruna Shanbaug* case[3], SCC p. 512, para 101)

> 101. The Constitution Bench of the Supreme Court in *Gian Kaur v. State of Punjab*[1] held that both euthanasia and assisted suicide are not lawful in India. That decision overruled the earlier two-Judge Bench decision of the Supreme Court in *P. Rathinam v. Union of India*[4]. The Court held that the right to life under Article 21 of the Constitution does not include the right to die (*vide* SCC para 33). In *Gian Kaur* case[1] the Supreme Court approved of the decision of the House of Lords in *Airedale* case[5] and observed that euthanasia could be made lawful only by legislation. (emphasis supplied)

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3 *Aruna Ramachandra Shanbaug v. Union of India*, (2011) 4 SCC 454 : (2011) 2 SCC (Civ) 280 : (2011) 2 SCC (Cri) 294

1 *Gian Kaur v. State of Punjab*, (1996) 2 SCC 648 : 1996 SCC (Cri) 374

4 *P. Rathinam v. Union of India*, (1994) 3 SCC 394 : 1994 SCC (Cri) 740

5 *Airedale N.H.S. Trust v. Bland*, 1993 AC 789 : (1993) 2 WLR 316 : (1993) 1 All ER 821 (HL)

[13] Insofar as the above paragraphs are concerned, *Aruna Shanbaug*[3] aptly interpreted the decision of the Constitution Bench in *Gian Kaur*[1] and came to the conclusion that euthanasia can be allowed in India only through a valid legislation. However, it is factually wrong to observe that in *Gian Kaur*[1], the Constitution Bench approved the decision of the House of Lords in *Airedale N.H.S. Trust v. Bland*[5]. Para 40 of *Gian Kaur*[1], clearly states that: (SCC p. 665)

> 40. ... Even though it is not necessary to deal with physician assisted suicide or euthanasia cases, a brief reference to this decision cited at the Bar may be made. (emphasis supplied)

Thus, it was a mere reference in the verdict and it cannot be construed to mean that the Constitution Bench in *Gian Kaur*[1] approved the opinion of the House of Lords rendered in *Airedale*[5]. To this extent, the observation in para 101 of *Aruna Shanbaug*[3] is incorrect.

[14] Nevertheless, a vivid reading of para 104 of *Aruna Shanbaug*[3] demonstrates that the reasoning in para 104 is directly inconsistent with its own observation in para 101. Para 104 reads as under: (SCC pp. 512-13)

> 104. It may be noted that in *Gian Kaur* case[1] although the Supreme Court has quoted with approval the view of the House of Lords in *Airedale* case[5], it has not clarified who can decide whether life support should be discontinued in the case of an incompetent person e.g. a person in coma or PVS. This vexed question has been arising often in India because there are a large number of cases where persons go into coma (due to an accident or some other reason) or for some other reason are unable to give consent, and then the question arises as to who should give consent for withdrawal of life support. This is an extremely important question in India because of the unfortunate low level of ethical standards to which our society has descended, its raw and widespread commercialisation, and the rampant corruption, and hence, the Court has to be very cautious that unscrupulous persons who wish to inherit the property of someone may not get him eliminated by some crooked method. (emphasis supplied)

[15] In paras 21 and 101, the Bench in *Aruna Shanbaug*[3] was of the view that in *Gian Kaur*[1], the Constitution Bench held that euthanasia could be made lawful only by a legislation. Whereas in para 104, the Bench contradicts its own interpretation of *Gian Kaur*[1] in para 101 and states that although this Court approved the view taken in *Airedale*[5], it has not clarified who can decide whether life support should be discontinued in the case of an incompetent person e.g. a person in coma or PVS. When, at the outset, it is interpreted to hold that euthanasia could be made lawful only by

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3 *Aruna Ramachandra Shanbaug v. Union of India*, (2011) 4 SCC 454 : (2011) 2 SCC (Civ) 280 : (2011) 2 SCC (Cri) 294

1 *Gian Kaur v. State of Punjab*, (1996) 2 SCC 648 : 1996 SCC (Cri) 374

5 1993 AC 789 : (1993) 2 WLR 316 : (1993) 1 All ER 821 (HL)

legislation, where is the question of deciding whether the life support should be discontinued in the case of an incompetent person e.g. a person in coma or PVS.

[16] In the light of the above discussion, it is clear that although the Constitution Bench in *Gian Kaur*[1] upheld that the "right to live with dignity" under Article 21 will be inclusive of "right to die with dignity", the decision does not arrive at a conclusion for validity of euthanasia be it active or passive. So, the only judgment that holds the field in regard to euthanasia in India is *Aruna Shanbaug*[3], which upholds the validity of passive euthanasia and lays down an elaborate procedure for executing the same on the wrong premise that the Constitution Bench in *Gian Kaur*[1] had upheld the same.

[17] In view of the inconsistent opinions rendered in *Aruna Shanbaug*[3] and also considering the important question of law involved which needs to be reflected in the light of social, legal, medical and constitutional perspectives, it becomes extremely important to have a clear enunciation of law. Thus, in our cogent opinion, the question of law involved requires careful consideration by a Constitution Bench of this Court for the benefit of humanity as a whole.

[18] We refrain from framing any specific questions for consideration by the Constitution Bench as we invite the Constitution Bench to go into all the aspects of the matter and lay down exhaustive guidelines in this regard. Accordingly, we refer this matter to a Constitution Bench of this Court for an authoritative opinion.

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1 *Gian Kaur v. State of Punjab*, (1996) 2 SCC 648 : 1996 SCC (Cri) 374

3 *Aruna Ramachandra Shanbaug v. Union of India*, (2011) 4 SCC 454 : (2011) 2 SCC (Civ) 280 : (2011) 2 SCC (Cri) 294